U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

Date: OCT 3 1 2012 Office: ATHENS, GREECE FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Shumway

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the waiver application is not necessary.

The applicant, a native of Lebanon and citizen of Syria, was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of committing a crime involving moral turpitude. The applicant was also found inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant has five lawful permanent resident children and a lawful permanent resident spouse. He seeks a waiver of inadmissibility pursuant to section 212(h) and 212(i) of the Act, so he can reside with his family in the United States.

In a decision, dated December 30, 2010, the field office director found that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act as a result of his conviction under California Penal Code § 273.5 for Inflicting Corporal Injury on a Spouse. The field office director also found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for failing to disclose his arrest and conviction on his visa application or during his consular interview in July 2008. The field office director then found that the applicant had failed to establish that his spouse would suffer hardship rising to the level of extreme as a result of his inadmissibility.

On appeal, counsel states that the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act because his conviction falls under the petty offense exception and thus, his failure to disclose this conviction is not material. Counsel states further that the applicant's spouse and children are experiencing extreme hardship as a result of their father's inadmissibility and that the applicant warrants the favorable exercise of discretion.

The AAO will first consider the finding of inadmissibility. Section 212(a)(2) of the Act states:

> (A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> . . . .
>
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of

> imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record indicates that the applicant was convicted of "Inflicting Corporal Injury on a Spouse" in violation of California Penal Code § 273.5(a) on September 15, 1998. The applicant was sentenced to 31 days in jail and 3 years probation. As this conviction was his first offense, the applicant was convicted of a misdemeanor, which in California holds a maximum sentence of no more than one year in prison. In *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993), the Ninth Circuit Court of Appeals held that spousal abuse under section 273.5(a) is a crime of moral turpitude because spousal abuse is an act of baseness or depravity contrary to accepted moral standards, and willfulness is one of its elements. However, the applicant's crime qualifies for the petty offense exception as the applicant was not sentenced to more than six months in prison and the maximum sentence for this crime as a misdemeanor does not exceed one year imprisonment. Thus, the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

In addition, the AAO finds that the applicant is also not inadmissible under section 212(a)(6)(C)(i) of the Act because his failure to disclose his criminal record was not a material misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

A misrepresentaton is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *see also Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

Accordingly, the AAO finds that the applicant's waiver application is not necessary, the appeal will be dismissed, and the field office director's decision denying the applicant's appeal will be withdrawn.

ORDER: As the applicant is not inadmissible, the waiver application is unnecessary, and the appeal is dismissed. The matter will be returned to the field office director for further action consistent with this decision.